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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Written statement*/ submitted by the Asian Legal Resource Centre,
a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 December 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

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ENG

Sri Lanka: the Bindunuwewa Massacre

1. On October 25, 2000, twenty-six persons (twenty-nine by some estimates), were chopped to death, while about fourteen others were seriously injured, in a rehabilitation detention centre at Bindunuwewa, Badulla, Sri Lanka. According to the National Human Rights Commission, which inquired into the incident, "the police officers, approximately 60 in number, were present at the place of massacre at the time of the massacre" and they "were fully armed". At least two of the detainees were shot by the police while trying to escape their attackers. Clearly these officers were participants in the massacre and have committed an even graver crime than the actual perpetrators. The armed police presence encouraged and enabled the attackers to engage in the massacre; they were assured that their crimes would have no legal consequences.

2. Initial stories told of a mob attack, however the timing of the event, in early morning, debunks the idea of a mob. Reliable inquiries have since revealed that the attackers were brought to the place by vehicle. In recent decades, there have been many attacks carried out by persons brought to the crime scene by others. The cruelty consistently demonstrated in these cases – hacking people to death, burning people alive, burning buildings – reveals that the attackers have not been amateurs, but persons with previous experience or "professional" training. At Bindunuwewa, they briskly did their job and soon disappeared. What grounds for personal anger or fury have been suggested to explain why someone would engage in such brutal crimes? The implausible proposition that members of a farming community living in the area carried out this massacre contradicts all that is known about the behavior of Sri Lanka's poor rural folk. This atrocity was committed by men with muscle, the will to kill and the know-how to go into hiding fast.

3. Sri Lankan law clearly states that accessories to murder are equally guilty of murder. What took place during this incident is much more than that. The sixty officers present were part of the arrangements for the carrying out of this massacre. Attempts to treat these police officers as less responsible parties go against the law. Additionally, efforts to diminish their legal responsibility will only result in further degeneration of the police force itself. Among the sixty police present, however, there must have been some with different ranks and some with a duty over others. These higher officers bear greater responsibility than their subordinates for the crimes that happened on this occasion.

4. Senior officers must also be held responsible for the actions of those present during the crime. The indications of these higher officers' culpability are:

    a. These sixty police could not have been present at this particular place and time but for their being assigned there. The documents in which their assignments are recorded will reveal who authorised their movement. On that basis, it should be possible identify and question the superior officers.

b. Immediately after the incident, there were many official versions of what happened that are now known to have been fabrications designed to misdirect inquiries. When senior police officers – normally those who conduct investigations – undertook to fabricate stories and misdirect criminal investigations they must have known the seriousness of their actions. Thus the senior police officers who made false press statements must be considered among the persons responsible for this crime.

c. Two to three hundred innocent villagers were detained in an effort to put the blame for this crime on the local people and cover up the real perpetrators. That senior police officers went this far suggests the extent of their involvement, how vast their fabrications. The pre-crime conspiracy was supplemented by subsequent falsehoods. These innocent persons were released only after sit-down protests by other villagers at the front of the police station.

d. Posters inciting violence were exhibited locally prior to this incident. How could they have been displayed without the knowledge of high law enforcement agents in the area? On previous occasions, for example during 1988-89, law enforcement agencies themselves forged posters and other materials under the name of the insurgents, to mislead the public about attacks they themselves carried out. Even if they were exhibited without their prior knowledge, tacit or express approval, why did they not have these posters removed? With prior knowledge of these incitements why did they not take action to provide greater security to the detainees or move them to a safer place?

5. Unfortunately, even the National Human Rights Commission has deemed the police officers' actions in this case as nothing more than a "serious dereliction of duty", effectively exonerating them from criminal responsibility and transforming the whole affair into a mere internal disciplinary inquiry. The criminals have been miraculously reduced to a group of fictitious "outsiders". The totality of this event and others like it as an act of mass murder has been undermined and the legal stage set for a few unimportant persons to take the fall in some low-key murder trials, at best. Meanwhile, the victims' families have already been promised compensation, not as an act of compassion by the authorities, but as a pay-off to silence their outrage and confuse the sheer criminality of the massacre by giving it the veneer of a civil case. Thus, this heinous crime is swept under the carpet.

6. Reports on the investigation into this incident indicate that the burden of proof has now perversely been cast onto the survivors. Having narrowly escaped death, the victims have found themselves required to identify the culprits and prove their allegations, in spite of the state being legally responsible for the investigation and prosecution. With sixty police officers present during the crime there need be no lack of evidence. These sixty eye-witnesses are those who must be interviewed; their log books and other notes that they are required by law to keep are those that must be examined. According to reports, about thirty of the officers were detained immediately after the incident. They must have been interrogated and their statements

too must be available. If there were ever a case with overwhelming evidence, this is the case. Suffice it to say that the Sri Lankan government has in its possession all the information necessary to act.

7. This incident is not only morally outrageous but of extremely serious nature both under Sri Lankan criminal law and international law.

   a. Under Sri Lankan law, the perpetrators of these killings must be charged with murder. The attorney general's department is legally responsible for the prosecution of crimes in Sri Lanka. As prosecutor, the department is obliged to act objectively and without fear or favour. If these prosecutions do not proceed or if the cases are not dealt with in a satisfactory manner, legal responsibility for the breach will fall primarily on this department.

   b. Under international law, these killings are a crime against humanity. They clearly fall within the definition of a crime against humanity of murder given by the Preparatory Commission for the International Criminal Court [PCNICC/2000/1/Add.2, article 7 (1) (a)]. Ultimately, the whole episode must be viewed from this standpoint.

   c. Irrespective, states are obliged to protect prisoners in their custody. The Government of Sri Lanka has failed in this duty. As a state party to both the International Covenant on Civil and Political Rights (ICCPR) and the Second Optional Protocol, the Commission is mandated to seek an explanation from the government for its failure to fulfill this positive obligation, and make appropriate recommendations in accordance with the ICCPR and international norms.